G-008/M-90-453 ORDER REVISING FLEXIBLE RATE TARIFFS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Patrice M. Vick	Commissioner

In the Matter of a Petition from Minnegasco to Revise Its Flexible Gas Tariffs	ISSUE DATE: December 14, 1990 DOCKET NO. G-008/M-90-453 ORDER REVISING FLEXIBLE RATE TARIFFS

PROCEDURAL HISTORY

In 1987 the Minnesota legislature enacted Minn. Stat. § 216B.163, a flexible rate statute for gas utilities. This law allowed gas utilities to offer flexible, discounted tariffs to customers subject to effective competition. Effective competition was defined as the capability of obtaining equivalent energy service from a nonregulated supplier.

In 1990 the flexible rate tariff was amended by the Minnesota legislature. The new version of the statute incorporated the following changes, among others:

1. The Commission must specify a maximum rate for any flexible tariff.

2. The Commission may specify the minimum term for which a customer must be on the tariff.

3. Eligibility restrictions were changed to disallow competition with district heating facilities as of June 1, 1987.

On June 19, 1990, Minnegasco (or the Company) responded to the statutory changes by petitioning for modifications to its flexible rate tariffs. The tariffs applied to Large and Small Volume Market Rate Gas Service and Large and Small Volume Market Rate Transportation Service. Minnegasco requested that the Commission approve the following changes to its tariffs:

1. The maximum rate would be set at an amount equal to the jurisdictional standard rate plus the same margin by which the Company is allowed to flex down to derive the minimum flexible rate.

2. There would be a minimum term of one year set for new contracts.

3. There would be a default price set for service received when there is no explicit price agreement. The default price would be set at the greater of:

   a. the Small or Large Volume Interruptible Service Rate plus $0.25 per Mcf; or

   b. the appropriate alternative fuel price as specified in the Small or Large Volume Market Rate Service Agreement, plus $0.25 per MMBtu.

4. There would be a limitation on competing with district heating sources. The following clarifying language would be added to the tariffs:

   > Customers of district heating facilities as of June 1, 1987 are not eligible to take service under this schedule. This restriction expires July 1, 1992.

5. There would be a requirement that only customers "subject to effective competition" could be eligible for the rate. The following further clarifying language would be added to the tariffs:

   > Customers of a gas utility whose only alternative source of energy is gas from a supplier not regulated by the Commission and who must use the gas utility's system to transport the gas are not subject to effective competition unless the customers have or can reasonably acquire the capability to bypass the gas utility's system to obtain gas from a supplier not regulated by the Commission.

Items four and five requested by the Company were simply restatements or clarifications of statutory provisions. Items one, two and three were requests for Commission approval of positions taken by the Company.

On August 6, 1990, the Department of Public Service (the Department) filed its Report of Investigation and Recommendation. In its filing the Department suggested deleting the provision requiring customers to pay the costs of switching from flexible rates to standard rates.

On July 10, 1990, Land O'Lakes, Inc. submitted comments. The Residential Utilities Division of the Office of the Attorney General (RUD-OAG) submitted comments on August 13, 1990, and on October 12, 1990. The Minnesota Industrial Energy Group filed comments on August 13 and 28, 1990.

Reply comments were received from the Company on August 16, 1990, and from the Department on September 13, 1990.

The Commission met to consider the matter on November 27, 1990.

FINDINGS AND CONCLUSIONS

Issues Before the Commission

The following issues were raised in the Company's petition or in the Department's Report of Investigation and Recommendation:

1. At what level should the maximum tariff rate be set?

2. What minimum term should be set for flexible rate contracts?

3. What default rate should be set for periods in which the utility and the customer have failed to negotiate a flexible rate?

4. Should the deletion to the tariff proposed by the Department be implemented?

The Maximum Rate

Positions of the Parties

The Department recommended that the Commission set the maximum rate for flexible tariffs at the standard rate as approved in the utility's most recent rate case. The Department argued that this rate would enable utilities to retain dual fuel customers who might otherwise leave the system by offering them flexible downward pricing. At the same time, according to the Department, this system would protect customers who seek alternative energy sources. Such customers would not be at the mercy of sudden price escalations for alternative fuels, because they could choose to pay the standard tariffed rate to Minnegasco. The Department was supported in its position by large energy users who submitted comments.

Minnegasco requested that the Commission set the maximum rate at an amount equal to the standard rate plus the same margin by which the Company is allowed to flex down to derive the minimum flexible rate. The Company argued that this method was most fair to all parties, because it would allow the level of risk to the customer to match the level of reward. The RUD-OAG supported this position in its comments.

Commission Action

The Commission agrees with the position advocated by Minnegasco and supported by the RUD-OAG. Allowing the maximum rate to flex above the standard rate to the same extent as it can flex below is fair to the parties involved. Under the method requested by Minnegasco, customers are sufficiently protected by the maximum rate "cap". Flex rate customers are thus not entirely subject to extreme price swings for alternative fuel. Any amount by which the flex rate may exceed the standard rate can be considered an appropriate "fee" the customers pay for the benefits of flexible pricing and protection against dramatic price increases.

Flexible rate customers are further protected against excessive cost by their option of choosing the standard rate over a flexible rate. The complaint process is also open to flexible rate customers who feel they have been treated unfairly.

If the maximum were set at the standard rate, flexible gas customers would receive the benefits of the flexible tariff without assuming any of the inherent risk. The Minnegasco method more closely follows the model of the open market place, in which competitive forces ensure that both risks and rewards are weighed when customers decide to enter the market.

Without the possibility of an upward flex, customers who do not qualify for flexible rates could shoulder an unjust portion of the utilities' fixed costs. Non-flex customers, usually small business and residential customers, would reap little benefit from the flexible rate tariffs. Nearly all benefits of the gas utility flexible rate statute would flow to the utilities and their large energy customers.

The Commission finds that setting the maximum flex rate above the standard rate by the same increment as the below-standard flex is fair to the utilities, the large customers, and to residential and small business customers. The Commission will set the maximum tariff rate in this manner.

Minimum Term for Contracts

Positions of the Parties

In its petition, Minnegasco requested a one year minimum term for new flexible rate contracts. The Department recommended the same term if the Minnegasco maximum rate method were adopted. The large energy users urged the Commission to require a 30 day minimum term for flexible rate contracts.

Commission Action

The Commission agrees with Minnegasco's position, which is also the Department's recommendation. A one year minimum term will provide sufficient stability for the contracting parties, yet will allow sufficient freedom for the parties to respond to market forces. A 30 day minimum term would in effect remove the possibility of an upward flex, since the customers would simply choose to revert to the standard tariff (and rate) in months when their alternate fuel price exceeded the standard rate.

Default Rate

Positions of the Parties

In its August 6, 1990 Report and Recommendation, the Department advocated using the utility's maximum flexible rate as the default rate. Thus, if a utility and a flexible rate customer failed to agree during negotiations for a contract renewal, the flexible rate would be set at the maximum until the parties settled on a negotiated rate. The Department argued that this would give both parties to the contract negotiations an incentive to agree on a rate. In times when alternative prices are lower than the maximum, utilities could risk losing customers and customers could risk locking into a rate that is higher than their alternative fuel price. When alternative prices are higher than the maximum, the contract rate and the default rate would usually both equal the maximum rate.

Minnegasco proposed that the default rate should be set at either of two standard rates, with the addition of a penalty per unit of gas. Minnegasco reasoned that the penalty was necessary to persuade customers to enter into meaningful negotiations.

Commission Action

The Commission agrees with the Department that the default rate should be set at the maximum flexible rate. Because the Commission has decided to adopt Minnegasco's plan for setting a maximum rate, the Commission finds that this is the proper formula for a default rate in the tariff.

The Commission will not add a penalty to the default rate. A default rate set at the maximum rate is fair to both utilities and flex customers and does not afford either the customer or the utility an unfair bargaining advantage.

Clarifying Language

Positions of the Parties

The Department agreed with the clarifying language proposed by Minnegasco in its petition.

The Department recommended that the Company remove the provision from its tariff which required customers to pay the utility for the cost of switching from flexible rates to standard rates. This change reflected the language of the amended flexible rate statute. Minnegasco had no objection to this change in its tariffs.

Commission Action

The Commission agrees with the Department that the recommended clarifying language should be added to and the specified language deleted from the Company's flexible rate tariffs.

ORDER

1. Minnegasco's June 19, 1990 petition for a revised tariff is hereby approved, with the following clarifications and modifications:

    a. The maximum rate for the Minnegasco flexible rate tariffs shall be set at an amount equal to the standard rate plus the same margin by which the Company is allowed to flex down to derive the minimum flexible rate.

    b. The minimum term for flexible rate tariffs between Minnegasco and its customers shall be one year.

    c. The Minnegasco flexible rate tariffs shall include a default rate which is equal to the maximum rate as set out in Paragraph One (a) above.

    d. The language requiring customers to pay the cost of switching from flexible to standard tariffs shall be deleted from the Company's tariffs.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)